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A REVIEW

OF THE

HALIFAX FISHERY AWARD.

HOW IT STRIKES A PRIVATE CITIZEN.

BY

ALEXANDER BLISS.

WASHINGTON:
R. BERESFORD, PRINTER, 523 SEVENTH STREET.
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(A portion of the matter herein contained has appeared in the *New York Herald* in its issue of October 21, 1878.)

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THE HALIFAX AWARD.

The announcement in November last of the award of the Fishery Commission was received with genuine and universal surprise throughout the United States. Many no doubt then first learned that a Commission had been sitting at Halifax, having the subject under consideration; others were aware that some points left undetermined by the treaty of Washington of 1871 had, as stipulated by that treaty, been referred to arbitration, but had no idea of their possible magnitude; while even the best informed, including the very negotiators of the treaty of 1871, and those most nearly connected with the Commission itself, were, it seems, wholly unprepared for the result—an award of $5,500,000 against the United States.

While the public prints teemed with denunciations of the chief arbitrator and virtual umpire, and of the fact and manner of his selection, it was astonishing how little curiosity they expressed to learn the grounds upon which a decision so unexpected was based, and how little was said to satisfy the curiosity the public might naturally feel on the subject. Nor was the mystery any better understood when Mr. Blaine, in two speeches during the winter, communicated to the Senate statistics showing the very slight actual yield to the United States of the Canadian in-shore fisheries of late years, and on the other hand exhibited the loss incurred by the United States through the relinquishment under the treaty of the duties hitherto accruing from imports of fish and

fish oil from Canada, and the corresponding gain to Canadians. Not even did the admirable letter of Mr. Evarts, of May 16, 1878, transmitted by the President to Congress the following day—while showing many reasons why such an award should not have been made—at all make apparent by what process it had been arrived at. But the letter alluded to documents transmitted with it, and these, it might be hoped, would at last furnish some light.

THE DOCUMENTS.

These documents were so voluminous that it was not until the middle of July that their printing could be completed, and that they were issued as Ex. Doc., No. 89, of the House of Representatives. They form altogether three ponderous octavo volumes of over one thousand pages each, or 3,495 pages in all. They consist of the "Case" of Great Britain, the "Answer" of the United States, and the "Reply" of Great Britain, of a great mass of oral testimony taken before the Commission, of affidavits, exhibits and other evidence offered on either side, of the arguments of counsel, and then a momentous half page, whereupon, without a word of antecedent explanation or calculation, are inscribed, over the signatures of two of the Commissioners, "Five million, five hundred thousand dollars in gold to be paid by the Government of the United States to the Government of Her Britannic Majesty," and over the signature of the remaining Commissioner is inscribed less than nothing to be paid by the same to the same.

Let us see, now that all is before us which was before the Commission, whether we can at all fill up satisfactorily to ourselves this hiatus between the closed case and the finding, and whether we confirm the award arrived at by a majority of the Commissioners.

THE BRITISH CASE.

And first we turn to the "Case" of Great Britain. This is the statement of her claim by herself. As such it must

embrace all that she intends to demand, or expects to prove. And, indeed, no exception, it would seem, could be made to it by reason of insufficiency. Whether we consider the variety of the grounds of claim stated, or the amount finally set up, it must be admitted that Great Britain has not failed to do herself full justice. We shall reverse the order followed by the Case, and state first, as the most interesting item, the amount claimed. This is, "in respect to the Dominion of Canada," $12,000,000; "in respect to Newfoundland," $2,880,000; or a gross total of $14,880,000 is what Great Britain claims "over and above the value of any advantages conferred on British subjects under the Fishery Articles of the Treaty of Washington."

The grounds of claim cover thirty pages. The gist of it is summarized in the following sentence (page 96):

"It has been stated in the previous portions of this chapter that an average number of at least one thousand United States vessels annually frequent British-Canadian waters. The gross catch of each vessel per trip has been estimated at $5,600, a considerable portion of which is net profit resulting from the privileges conferred by the treaty."

From a statement further on in the case of Newfoundland (page 108) it appears that the net profit is reckoned at twenty per cent. which would give $1,120 as the net profit of each vessel. Now, although Great Britain does not state what proportion of this alleged net profit she would think it proper to charge for the privilege of fishing in her waters, it is clear that it could not be the whole of it. For if the whole of the net profit of the operation were to be absorbed in paying her for the bare privilege of fishing, who would engage in it? It is not Great Britain that furnishes the capital invested in the vessel and its outfit, nor who pays the wages of the crew, or the running expenses, or the wear and tear, or the interest on the outlay, nor does she incur, what is, perhaps, more than all, the great risk of the loss of all these. Nor does Great Britain even deliver or guarantee to the fisherman a certain quantity of fish; all that she supplies is the privilege of catching, if he can, some fish within a certain limit.

WHAT WOULD BE FAIR.

Now, what proportion of the profits should Great Britain receive in view of what she furnishes, and of what the other party furnishes? Looking at it as a commercial transaction, what proportion could the other party afford to pay her? Would any British or Canadian merchant undertake to guarantee to pay for the privilege in question, in view of his outlay and his risks, a sum equal to one-fourth part of the net profits, as above calculated?

But let us assume that Great Britain shall receive one-fourth part of the net profits at her own calculation of them. This would be $280 per vessel. That this sum is far beyond the estimate placed by Great Britain herself upon the privilege is shown by the fact that, when a few years since that Government adopted the system of issuing licenses to American fishermen, the prices fixed by it for these licenses were as follows:

In the first year (1866) the license fee was fifty cents per ton. The average tonnage of fishing vessels, as appears by the official British return of licenses issued (pp. 197–218) does not certainly exceed sixty tons. Thus the price fixed by Great Britain herself for the privilege in question that year was $30 for each vessel. Four hundred and fifty-four vessels took out licenses that year. In 1867 the fee was raised to $1, or say $60 per vessel; 295 vessels received licenses in that year. The next year the fee was raised to $2 per ton, or say $120 per vessel, the highest price attained. In that year only sixty-one licenses were taken out; in the next, thirty-one, and the system was then abandoned. On page 82 of the British case occurs the following passage:

"*This system* (that of issuing licenses,) *after being maintained for four years, was discontinued owing to the neglect of American fishermen to provide themselves with licenses.*"

The rate charged, had it been paid, was evidently satisfactory to Great Britain. If 1,000 vessels, the number which Great Britain claims avail themselves of her privilege, had paid at and from that time $120 a year apiece, the Fishery

Commission, we may presume, would not have been called into existence. Two hundred and eighty dollars per vessel is then more than twice as much as Great Britain herself asked for this privilege before she came to bring in her bill before this Commission. Two hundred and eighty dollars apiece for 1,000 vessels is $280,000 a year, which for twelve years is $3,360,000.

This, then, so far as any positive showing of figures goes, is the extreme statement of Great Britain's case. With the exception of fixing the proportion to which she would consider herself entitled of the net profits of the business—a point which she leaves indefinite—it is her own statement. In the case of Newfoundland, further on, (page 108,) she claims one-tenth only of the net profits. The other data—the number of vessels, the amount of their profits, are her own.

But we have seen that the total of her claim for the Dominion of Canada alone, and that, too, over and above the value of the concessions made under the treaty by the United States to Canada, is $12,000,000. How is this very great difference of many millions accounted for? On what does this enormous balance of the claim rest? The following sentences, quoted from the summary of the "Case," exhibit in her own words her method of swelling $3,360,000 to $12,000,000:

INDIRECT ADVANTAGES TO AMERICA.

"These privileges profitably employ men and materials representing in industrial capital several millions of dollars; the industries, to the advancement of which they conduce, support domestic trade and foreign commerce of great extent and increasing value."

We were told a few years ago, upon occasion of another international Commission called to assess damages, how monstrous a thing it was to include in a claim for damages any demand whatsoever for *indirect damages*. But when it is a question of paying for advantages, other laws, it seems,

govern, and the *indirect advantages* are to be traced to the utmost extent that ingenuity can devise, and their value calculated and included in the price.

A NEW THEORY OF PRICES.

"They (these privileges) also serve to make a necessary and healthful article of food plentiful and cheap for the American nation!"

The Agent of Great Britain here announces a new principle in political economy—one which, if admitted, will bring joy, indeed, to all venders, but sorrow to unlucky consumers. According to this new theory, your baker should by no means be content to charge you for a loaf of bread its mere market value—*i. e.*, the cost of its production with a fair commercial profit. He must follow his loaf into all its effects upon your household. If he shall find that it proves "a necessary and healthful article of food, plentiful and cheap for" your family, he is to make that the ground for an additional charge. If the bloom of health mantles in your daughter's cheek; if your son wins laurels at school or at base ball after partaking of it; if you, strengthened by it, transact successfully your business, it is clear that your baker is entitled to a percentage on the blessings and earnings of the day. In short, the loaf, for which he has thought himself amply remunerated at ten cents, is evidently cheap to you at a dollar, and must be paid for accordingly.

"It is not merely the value of 'raw material' in fish taken out of British-Canadian waters which constitutes a fair basis of compensation."

Hear. all ye producers of wheat, of cotton, ye owners of coal! Think, before you sell, of all the kneading troughs, the ovens you will call into activity, of the wheels of industry you will set in motion, of the happy hearths you will brighten, and reckon all these in your price!

"In addition to the advantages above recited, the attention of the Commissioners is respectfully drawn to the great importance attaching to the beneficial consequences to the United States of honorably acquiring for their fishermen full

freedom to pursue their adventurous calling without incurring constant risks, and exposing themselves and their fellow countrymen to the inevitable reproach of wilfully trespassing on the rightful domain of friendly neighbors."

Remember, ye prudent householders, what endless lawsuits with other dealers you may be avoiding by patronizing this excellent baker—what doctor's bills might ensue upon less wholesome food!

"Paramount, however, to this consideration is the avoidance of irritating disputes, calculated to disquiet the public mind of a spirited and enterprising people, and liable always to become a cause of mutual anxiety and embarrassment."

Surely our dear Uncle Sam will think no price too exorbitant which will secure to his enterprising nephews of Gloucester and Provincetown such serene results? For what a direful thing it would be; what tremors would shake his fond avuncular heart, if, while he were complacently contemplating their piscatory enjoyment, the British lion should chance to roar!

TO BE SERIOUS.

But let us not for a moment be understood as seeking to throw ridicule upon the considerations themselves thus so ably set forth in the British case, and last above cited. On the contrary, they are most important, and such as we should hope would animate every sound American statesman. That they were thought to be of primary importance by the American negotiators of the treaty of 1871 cannot be better shown than by quoting the very next sentence of the British case:—

"It was repeatedly stated by the American members of the Joint High Commission at Washington, in discussing proposals regarding the Canadian fisheries, 'that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation.'"

But the American negotiators did not expect that they should be asked to pay on each account separately—twice over for the same thing. The absurdity of the present claim

lies in the fact that after fixing upon the article to be sold its full price, at the highest valuation, it is sought to add thereto a charge of more than double the amount for the inconvenience it would be to us if we did not possess it! If we pay to avoid international irritation, the sum determined upon includes, of course, the value of the fish caught, for otherwise why should we trouble the British waters at all? If, on the other hand, we pay for the fish caught at their full valuation, that is the whole of it—the beginning and the end—the one includes the other.

INDIRECT ADVANTAGES NEVER COMPENSABLE.

We compared just now indirect advantages to indirect damages, but there is in reality no parallelism between the two. Indirect advantages are far less justly entitled to compensation than indirect damages; for if, on principle, indirect damages may not be allowed, yet, in fact, they are often as palpable and as demonstrable as direct damages; nor are they covered by the compensation made for direct damages, since they may often be wholly distinct both in their subject, and in the persons who suffer them.

But the indirect advantages, which may spring incidentally from a commercial transaction, are included in and closed by it. The seller receives his sure price for the article as it is. He cannot be a loser; nor is he entitled to be a sharer in the future gain; all such is the affair of the buyer only. The seedsman sells his seed as seed, at the price of seed. He does not count the number or the size of the possible cabbages which your cultivation may develop.

ADVANTAGES TO GREAT BRITAIN.

We have thus seen that the British case, which is their own statement of their claim, and must include all they can claim, only makes up, by actual show of figures, $3,360,000, and this by conceding to them their own data, and by taking no account of the deductions to be made by reason of the advantages accruing to Canada under the treaty. And what

are these? Here we are able to leave the uncertain domain of estimate and calculation, and present the actual statistics of the amount of duties upon fish and fish oil imported from Canada, lost to the United States Treasury under the operation of the treaty for twelve years, with the corresponding gain to Canadians. The duties upon actual importations for the years 1874, 1875, and 1876 (see page 3,352, iv,) were, had they been collected, respectively, $335,181, $355,200, and $332,421. Applying the average of these amounts, viz.: $340,934 to the twelve years of the treaty we have $4,091,208 as the total of duties lost to the United States. Deducting this sum from $3,360,000 how much is left?

Or, if we concede to Great Britain one full half share of the net profits as estimated by her, instead of one-quarter—*i. e.*, $6,720,000—and deduct therefrom the above $4,091,208 of duties lost, we shall still have, as the amount of any substantial claim, but $2,628,792. All the balance of the $12,000,000 is made up only by charging over and over again for the same thing, as looked at from different points of view.

A GROSS INCONSISTENCY.

No account is here taken of deductions to be made from the amount to be awarded to Great Britain by reason of the advantages accruing to the Canadian Provinces from the corresponding privileges accorded to them, under the treaty, of fishing in our waters. It is true Great Britain denies that this privilege is valuable to them. But America asserts that it is; that the mackerel in some seasons seek in preference our shores, and that menhaden, the best bait for them, are to be caught exclusively off our coast. Whatever the intrinsic value of our fisheries, Great Britain contends, however, that to her subjects of the Provinces they are of no use, because they have plenty of fishing nearer home. But when, on page 104 of the case, Great Britain is arguing that America should pay for the use of the Newfoundland inshore fisheries, although confessedly never resorted to by us, her view suddenly changes, for we find the following sentence:—

"It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it."

Gross as this inconsistency is, it is evident from the result that it prevailed in the award, that a majority of the Commission were persuaded to allow America nothing for her fisheries because not used by Canadians, while compensating Great Britain for all of hers whether used or not by Americans.

Nor do we make any account of the £100,000 saved to Great Britain annually, as it appeared in evidence, by her being relieved by the treaty from the necessity of guarding the coasts of her provinces against American fishermen, an expense which, for twelve years, amounts to the sum of $6,000,000.

ARE HER FIGURES CORRECT?

We have hitherto assumed that the British case was correct in assuming that the number of American vessels annually visiting the British waters was 1,000, and that the value of the gross catch of each was $5,600. Now, it is to be remembered that in those 1,000 vessels Great Britain includes all American vessels, those resorting to the deep seas for the codfishery—open to all the world—as well as the mackerelers, who may pursue their prey near the shore. But it is well understood that the encroachments upon British waters by American fishermen complained of are almost exclusively confined to the mackerelers. It is they only who can be said to catch British fish. Now the number of mackerelers alone does not appear in evidence to exceed 300 in one year. In 1873 the number was, by British count, 254; in 1874 there were noted 164 (pp. 222–229). It is only as to this class of fishermen that Great Britain can claim a compensation based upon their profits. "The gross catch," the case states, "of each vessel per trip has been estimated at $5,600 per vessel." But an examination of the exhibits laid before the Commission, as to the value of the

gross catch, and taking the average of so many as 1,000 vessels, by no means bears out so high an estimate. Thus we see that the data by which even the sum of $3,360,000 was arrived at must be much pared down to get at the real facts.

"IN RESPECT TO NEWFOUNDLAND."

As to the $2,880,000 charged separately "in respect to the Province of Newfoundland," thus swelling the whole grand claim to $14,880,000, it really seems hardly worth while to say much. Evidently the command had gone forth to those having the matter in hand to bring in a big bill. As the fisheries of Newfoundland are deep sea fisheries, free to all, ingenuity was considerably taxed to devise grounds for a charge as to these. But by dint of searching some grounds were at last hit upon:

First. It was remembered that besides the deep sea fisheries, which Americans do use, there is also along the entire coast, as happily along all coasts, an in-shore fishery, which it is admitted Americans do not at all use. But then they might!

Second. The privilege is accorded to Americans resorting to the deep sea fisheries of buying bait and supplies in the harbors of Newfoundland. It is true they pay for these at the prices asked, and the traffic affords employment and profit to a large class of the population of the island destitute of other means of livelihood, and who suffered at its withdrawal in the interval between the two treaties. Still, this "privilege," too, must be compensated.

Third. Newfoundland being near by to the deep sea fisheries, serves as "a basis of operations"—a place to put into in distress, to refit, &c. And though these incidents bring to the people of this seagirt island money and occupation and intercourse with the world, they also form clearly good ground for a further charge. In view of all these "privileges" Great Britain thinks that over and above the $12,000,000 claimed for Canada, she is entitled to ask, "in respect to the Province of Newfoundland," the further sum of

$2,880,000—and so by an easy sum in addition we have $14,880,000.

ANOTHER "PRIVILEGE" ALMOST OVERLOOKED.

It seems, however, that, notwithstanding the ingenuity and indefatigability of the British agent and the five counsel, one from each Province, who aided him in getting up the case, one important item was, after all, forgotten. But though omitted in the case, it did not fail to appear in evidence. Witnesses were examined, and schedules exhibited, to show the cost of construction and maintenance of all the light-houses, fog whistles, and buoys along the coasts of the Provinces! It was not stated whether the whole sum or what proportion of it was thought to be chargeable to the United States, nor whether the amount was included in the $14,000,000 or additional thereto, but it was thrown in as a part of the British claim! Ridiculed by the American counsel, it was not insisted upon. But who can say that even such evidence did not have its effect upon the result? The "impartial arbitrator" might very well imagine that he could not go very far amiss by splitting the difference between the extreme demand of the one party, and the total denial of the other. Whatever, therefore, swelled the claim swelled the award. And so we get a glimpse at the manner in which the very surprising award of $5,500,000 was arrived at.

Such is the British case. To sift and digest the mass of evidence offered in support of it, or that which the United States introduced on its behalf, would weary the reader; nor could we, within a brief compass, do justice to the able answer of the Agent of the United States, or the admirable arguments of the counsel on both sides. Suffice it to say, that however the majority of the Commission reached the decision they made, it cannot be seen to be due to any deficiency in the presentment of the case of the United States by its Agent and Counsel.

THE COMMON SENSE VIEW.

But the Commission which was duly constituted according to a previous treaty, have made their award. There is no appeal to us, the public. We cannot reverse it. But we can, as individuals, have our opinion about it, and in order to satisfy ourselves what that opinion should be let us look at the question as one still open.

WHAT DID GREAT BRITAIN CONCEDE?

Admitting that it be necessary, or equitable, or politic to make to Great Britain compensation for the possible encroachment by Americans upon fishing territory claimed to be hers, by what method can we best arrive at a fair estimate of what that compensation should be? What is there in history or in business that offers the most nearly parallel precedent or criterion, by which to determine the nature of that to be compensated for, and to measure the degree of the compensation? To answer this question we have first to make clear to ourselves what it is that Great Britain gives us. Not fish, certainly, either barreled or salted, or even fresh, for we must catch them ourselves. Nor can Great Britain claim to own even the fish we may catch, for if the same fish chanced to be some distance further from the shore, she could make no claim to them. All that Great Britain claims to own is the right to exclude outsiders from coming to fish within a certain limit—three miles from the shore. And this right it is, which by the treaty she waives as to Americans; nothing more. Now, what is this concession? "I do not know," says Mr. Dana, in his argument for the United States, "what to liken it to. It certainly is not to be compared at all to a lease, because the lessor furnishes everything that the lease requires." But with this grant there goes nothing visible, or tangible, or ponderable. It is a right in the air—or rather in the water. "What," continues Mr. Dana, "is it like? Is it like the value of a privilege to practice law? Not quite, because there always

will be lawsuits, but it is not sure that there will always be mackerel. Suitors, irritated men, may be meshed within the seine which the privileged lawyer may cast out; but it does not follow that the mackerel can be. On the contrary, they are so shrewd and so sharp that our fishermen tell us that they cannot use a seine within their sight; that they will escape from it. But the lawyer is so confident in the eagerness of the client for a lawsuit that, instead of concealing himself and taking him unawares, he advertises himself, and has a sign of his place of business."—(Argument of Hon. R. H. Dana, Jr., p. 1,690–1.)

WHAT IS THE FAIREST MEASURE OF ITS VALUE?

Now, whether it be to practice law or for whatever else, is it not clearly a license that the privilege granted by Great Britain to the United States under the treaty of 1871 more nearly resembles than anything else? A license is the permission granted by one in authority to do a certain act or thing which it is claimed by such authority cannot be done without permission. Does it not follow that the compensation to be made for this privilege would naturally be of the character and degree pertaining to licenses, *i. e.*, in the form of a license fee payable by the person who enjoys the privilege? But since in this case the authority granting the license is of one nation, and those to whom it is granted of another, it seems wise that the Government of the latter should step in, and, to avoid complications which might arise out of such a relation between individuals and a foreign power, offer to assume, on behalf of its citizens, the payment of what should be found to be the sum of the license fees payable by them. And because the Government thus assumes to pay the gross amount, instead of its being individually collected, is certainly no reason why the total compensation should be greater than if separately collected, but rather if anything the reverse. Now we have seen that Great Britain claims that 1,000 American vessels avail themselves of her privilege. We have seen that when that Government

itself adopted the policy of compensating itself by licenses, it voluntarily fixed as the maximum price of such license the sum of $2 per ton; that the average tonnage of the 1,000 vessels would certainly not exceed sixty tons; that the average license fee, therefore, would be $120, which for 1,000 vessels would yield annually $120,000, and for twelve years would yield $1,440,000.

Could we more nearly approximate to what we are seeking—a just compensation to Great Britain for the participation by Americans in her fishing privileges for the period of twelve years, than is thus arrived at?

THE DEDUCTIONS TO BE MADE.

But against this amount of $1,440,000 we have to set down, on the side of America, the sum of the duties relinquished by her for twelve years upon fish imports from Canada, a sum which we have seen to exceed $4,000,000 and there is also to be set down the value, whatever it may be, of the fishing privilege conceded by America to Canada.

After making these deductions there will remain the sum, which the Commission at Halifax was instituted to ascertain, if it existed, as due from the United States to Great Britain, and which the British Commissioner and the Umpire found to be $5,500,000.

THE CONSEQUENCES OF THIS AWARD.

While America may well regret the loss of so large a sum of money, the saddest result, perhaps, of this award will be the shaken confidence of the American mind in the efficacy of arbitration as a remedy in international disputes.

HISTORY OF THE COMMISSION.

Already the correspondence, as subsequently disclosed, which passed between the two Governments respecting the constitution of the Halifax Commission produced, an unfavorable impression, and argued ill for a satisfactory result. It seemed as if one of the parties at least was ani-

mated, not so much by the commendable desire to secure an impartial arbitrator, as to make sure of one who might be hoped to be partial. The persistence of Great Britain in urging the choice of Mr. Delfosse, when it was from a British Commissioner that the suggestion had first come of the manifest ineligibility of a Belgian, did not look well. Her obstinate adherence to his nomination as the only one she would listen to, and her refusal to entertain the suggestion of any of the numerous and widely various names proposed by America are to be explained only by her early determination to fall back upon the alternative clause of the treaty, so that the selection should be left to the Austrian Ambassador at her own court!

And what is to be said of the double inconsistency of her declaring, while nursing this purpose, that she would not accept for the office any foreign representative accredited at Washington, and yet insisting upon Mr. Delfosse, who has for years been accredited at Washington as the representative of Belgium? Why should Great Britain be so confident that the Belgian minister alone would be exempt from the pre-possessions which she held sufficient to disqualify all his colleagues?

AUSTRIA TO CHOOSE THE UMPIRE.

The insertion in the Treaty of Washington of a clause admitting the possibility, in any contingency, of the selection of the umpire for the Fishery Commission being left to the *Austrian* minister at *London* was of itself a source of painful surprise to Americans. Of all the Powers, Austria is probably the last that the American people would naturally or voluntarily select for such an office. Her traditions, her institutions, and her tendencies are all at direct variance with our own. As far removed from each other in sentiment as by longitude, we have never been brought into contact except by a difference. There is much, on the other hand, in their past associations, as well as in their present interest, to unite her with England.

But it was not to an Austrian merely nor only to an Austrian Premier—the successor of Metternich—but to an Austrian representative accredited at *London*, that the selection was to be left. Nor is this all. If, on general principles, an Austrian nobleman would not have been the first choice of American Republicans, as an arbiter over an important national interest, yet they might feel a just confidence that the very disparity of institutions would prompt a true Austrian to rise above any supposed prejudice of class or nation, and do us exact justice. But, unhappily, Count Beust, the Austrian Ambassador at London, is not even an Austrian, or, rather, he is more Austrian than the Austrians—for he is a convert—an Austrian, not by birth, but by his own choice. Had the American High Commissioners, if not aware of the fact themselves, but turned to the nearest Biographical Dictionary, they would have found that Count Beust is, by birth, a Saxon, that he abandoned his native country in the hour of her trouble, just after the Austro-German war, and went over to Austria to enlist in the service of the House of Hapsburg. He was rewarded by being made Premier, but a few years later he retired from the Ministry to become Ambassador of Austria at London. Such was the man, an Anstrian in policy, a resident of London, and a soldier of fortune, whom the American negotiators suffered to be selected, out of all the population of the Globe, as the person who should designate the umpire, to whom was to be referred a question touching America, and one so contested, that the Joint High Commission itself had been unable to settle it!

THE MISCHIEF THAT CLAUSE WORKED.

How such a clause came to be inserted in the Treaty, we have yet to learn. Was it from ignorance? or was it from negligence? or was it purposely suffered to be slipped in as a make-weight, perhaps, to some supposed concession from the otherside, and in the hope that it would prove harmless. It is true that, owing to a most unforeseen circum-

stance, hereinafter referred to, this alternative clause of the treaty became only nominally operative. When the two Governments at issue, came at last to agree of themselves upon the umpire, the Austrian Ambassador, with great courtesy, carried out their united wish. But the existence of the clause in the treaty had had its full effect. It had hampered America in her effort to secure an umpire, who might be supposed to be unbiased. It had encouraged England to refuse all of the numerous personages of so various nationality, whom America suggested, and enabled her to force upon us her own choice.

But, while England was unreasonably pressing Mr. Delfosse, we were cheered to see the good fight made against him, (not personally, of course, for the integrity and high sense of honor of Mr. Delfosse have never been questioned by those who know him, but on those general grounds which govern such selections,) on behalf of America. What, then, was our consternation to behold the extraordinary somersault, so unexpectedly executed by our, then, Secretary of State, Mr. Fish, in the closing scene of his Last Appearance, landing him on his knees, at the feet of Mr. Delfosse, to beseech him to do us this service! Truly here was a feat, which, for the moment, fairly took away the breath of us simple spectators, and it must have been scarcely less surprising to the performers themselves. But it serves to show what rich resources of unimagined agility, a supple and dexterous diplomacy holds at the disposal of a Master in the Art!

THE WHOLE EFFECT.

Take it altogether, looking at the whole history of the Fishery Commission, from its inception in the Treaty of Washington, through the discouraging circumstances which attended its constitution, to the award finally registered at Halifax on the 23d of November, 1877, it may well be doubted, whether, should Great Britain decide to pocket the

$5,500,000, the American people will be soon again disposed, in the emergency of another international dispute, to submit any vital interest to the hazards of arbitration as at present understood and practiced.

INTERNATIONAL COURTS IN THE FUTURE.

Are we justified in withholding from these International Courts, as now organized, that confidence in the justice of their decisions which can alone induce us to continue to resort to them?

A Tribunal to which are referred interests which concern nations, and of such magnitude that they cannot themselves agree upon them, should, it would seem, be surrounded with guarantees and safeguards, at least equal to those which attend ordinary courts of justice. International Commissioners are now vested absolutely with the combined powers of Jury and of Judge. But while unlike a jury, in that no restraint seems to be exercised upon the evidence to be admitted before them, no matter how irrelevant or delusive, on the other hand they are not necessarily selected with a view to the experience and special attainments which qualify a judge.

ARE THEY JURYMEN OR JUDGES?

If the members of these Commissions may be assumed to be, as undoubtedly they are, superior to the ordinary grade of local jurymen, they are after all still but mortals, and not utterly exempt from the impulses and frailties which pertain to humanity. Yet their verdicts, which are deprived of the guidance and counterpoise ordinarily imparted from the Bench, are final and without appeal.

If in enlightenment and dignity they are thought rather to partake of the character of the judge than of the jury, the result of their labors should be announced, not like the finding of the jury, in a bare monosyllable, or in figures unaccounted for; but rather, after the manner of the judge's decision, should be preceded by a review of the evidence, and

a brief recital of the reasons which have led to the conclusion.

A judicial decision which is unaccompanied by any exposition of the steps by which it is arrived at, resembles rather the sentence of an Inquisition, or the arbitrary decree of a Star Chamber, than the deliberate judgment of a respected Tribunal of Justice.

A GREAT OMISSION.

Had the Commissioners in this instance not ruthlessly knocked away the scaffolding, by which they themselves attained to so high a pinnacle, but had permitted an interested public to mount with them, step by step, in the steep ascent, the same broad view, vouchsafed to them, might have been unfolded to us all, and this writer and these readers had been spared their present pains.

But this defect in the record of the Halifax Commission, while great, is not irremediable. It is still competent, we presume, for the majority of the Commissioners, with the consent of the parties, which assuredly would not be withheld, to gratify the pardonable curiosity of a nation, mulcted in so large a sum, while at the same time they justify themselves, by making public the process by which their result was reached.

The British claim was $14,880,000. America denied that, after allowing for the value of the concessions she made, anything at all was due. In fixing upon the sum of $5,500,000, which portions of the British claim were thrown out? What allowance, if any, was made for America's concessions? After charging us for the fish themselves, what amount did they set down against us, because "they serve to make a necessary and healthful article of food, plentiful and cheap, for the American nation?" The production of the simple sum in arithmetic—it must have been, it would seem, in addition and multiplication only—performed by these gentlemen in the interval between the closed case and the finding, would fill up a now painful void, and at once establish a connection between the two.

AMENDMENT OF THE RECORD.

The published Proceedings include a Protocol for each day. The Protocol of Wednesday, November 21st, 1877, states that on that day the case was closed. The Protocol of Friday, November 23d contains the award as rendered. But there is no Protocol given for Thursday, November 22. Yet this day can by no means be held to be a *dies non* in the calendar. For America, at least, it was big with secular importance. Will not the majority of the Commissioners direct the Secretary of the Commission, who was furnished for the occasion by the British Foreign Office, to supply this deficiency?

Or, are we to assume that the ciphering of that memorable day was done in perishable chalk? or on the treacherous slate? and that it is no longer legible? Was a computation, which involved millions, submitted to accountants (one on either side) who should control and verify its accuracy?

Even one other pair of eyes might, perhaps, have discovered some slight but pregnant error—a decimal point misplaced, or too many ciphers brought down. The humblest debtor is entitled in a free country to be furnished with the items of his liability. Even the school boy must show his ciphering as well as his result.

The mere sight of the actual figures would at once calm the public imagination, now left to its own unbridled fancy to discover, as it can, by "what charms, what conjuration, and what mighty magic" the result, which has been announced to us, was reached.

THE PAYMENT.

The day is rapidly approaching—it is the 23d day of November, 1878—on or before which the American Government, in fulfillment of her treaty obligation, is to pay over to the Government of Her Britannic Majesty (unless, in the short interval which remains, that Government shall yet signify a contrary expectation) the amount of the award, which, under the circumstances we have seen, was rendered

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at Halifax on that day last year—such amount having been already, to meet the contingency of its acceptance by Great Britain, appropriated by Congress.

If the revered relative, who with prudent thrift watches over our youthful welfare, shall wince somewhat at being called upon to put his initials to so large a check, he will, let us hope, be consoled by the reflection that he has at least provided for his numerous family, for the unexpired term of six years yet to come, "a necessary and healthful article of food, plentiful, (if they shall consent to be caught,) and (according to the latest theory of prices) cheap."